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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,232	09/17/2003	Carlos Fernando Bella Cruz	END920000033US2 (13467Z)	6285
23389	7590	10/21/2005	EXAMINER MCALLISTER, STEVEN B	
SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530			ART UNIT 3627	PAPER NUMBER

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/665,232

Applicant(s)

CRUZ ET AL.

Examiner

Steven B. McAllister

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 8-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/27/2003.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 8-10 and 17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 8-10, and 17 lack a nexus with the technological arts. The business method lacks a nexus with such technology (e.g., lacks a recitation of the steps being performed by a computer).

Claims 8 and 17 also are not concrete because they do not have an assured outcome. The claim recites assigning and unassigning orders until either all order are fulfilled or the are no more assignment options to test. As claimed, one practicing the method could begin with a different set of units and orders and proceed in a different procession of matches. Therefore, the first assignment that fulfills all orders could change each time the method is practiced with the same data. It is noted that the additional limitation of claim 9 appears to remedy the lack of concreteness since it sets a starting point and path (searching from the earliest due date).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 10, 11, 13, 14, and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Production Planning and Scheduling" (ACESITA).

ACESITA shows identifying finished units and orders for those units; identifying valid finished units that are available to be assigned to the orders; and units to orders (see e.g., pgs. 22, 42). ACESITA further shows identifying defects in the units; identifying defects the customers are willing to accept; and assigning units on that basis. (It is noted that ACESITA recites that the system "matches the relevant attributes of the material to the specification of the order and determines the eligibility of the material for a given order". It continues to state that factors such as "quality", or relative presence of defects, are considered in assigning the material to orders.) ACESITA does not explicitly show iteratively assigning and unassigning until all order are fulfilled or no options are left. However, it is notoriously old and well known in the art to do so. It would have been obvious to one of ordinary skill in the arts to modify the method of ACESITA by iteratively assigning units to orders in order to ensure that all possible options are tested so that the most efficient option can be used.

As to claims 10, 13, and 16, it is noted that in the iterative assigning and unassigning as contemplated in the rejection of claims 8, 11, and 14, the step of searching among previously assigned orders for material is accomplished since material which was assigned to an order in a previous iteration is unassigned to attempt to fulfill the incomplete orders.

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As to claims 17-19, ACESITA shows that the finished units are metallic units and applying the units to the orders according to business rules. It does explicitly state that one of the business rules is to identify the largest portion of metallic units that can be assigned to an order. However, it is notoriously old and well known in the art to do so. It would have been obvious to one of ordinary skill in the art to further modify the method of ACESITA by identifying the largest area of the metallic units that can be assigned to the orders in order to reduce waste.

Claims 9, 12, 15, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over ACESITA as applied to claims 8, 11, and 14 above, and further in view of Dye (4,459,663).

ACESITA shows all elements of the claims except identifying incomplete orders and due date and assigning units to the earliest orders. Dye shows these elements. It would have been obvious to one of ordinary skill in the art to further modify the method of ACESITA by identifying the date of orders and assigning items to the earliest orders in order to avoid missing a delivery date.

Response to Arguments

Applicant's arguments filed 9/27/2003 have been fully considered but they are not persuasive.

Regarding the 101 rejection, the examiner refers the Applicant to the examiner's response of the prior Office Action.

Regarding the 103 rejection, for the reasons cited in the rejection, the examiner believes that the ACESITA reference discloses all recited elements.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is 571-272-6785. The examiner can normally be reached on M-Th 8-6:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven B. McAllister

Steven B. McAllister
Primary Examiner
Art Unit 3627

STEVE B. MCALLISTER
PRIMARY EXAMINER